IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 5010 of 1999

Sunanda Manohar Jadhav)
Aged adult, residing at 3,)
"Manohar" Madhuban Society)
Behind Hotel Dwarka,Nasik-1) ..Petitioner

vs.

1. The Competent Authority)
under the Urban Land)
(Ceiling and Regulation)
Act, Nashik)

2. The Minister of the)
State, Grihanirman and)
ULC, Mantralaya,Mumbain)

2A. The Secretary, Housing)
& Special Assistance)
Department, ULC)

3. The State of Maharashtra)

4. Yamini Ashok Yadav,)
aged adult, Occupation)
Household)

5. Harshal Ashok Yadav)
Aged major)

6. Balkrishna Ashok Yadav)
Aged major)

Nos.4, 5 and 6 residing)
at Choudhari Nagar,)
Behind Dr.Deshpande)
Bungalow, at post Ozar)
(Mig), Tal.Niphad,)
District Nashik)

7. Shilpa Ashok Yadav @)
Sou.Shilpa Madhav Chavan)
aged adult, C/o)
Madhavrao G.Chavan at)
Post Ugaon, Tal.Niphad)
Dist. Nashik)
8. Chandramohan Digambar)
Yadav, Aged adult,)
1,Crystal Avenue,behind)
Dairy Don Ice Cream)

Parlor, College Road)
Nashik-5)

9. Pramod Digambar Yadav)
aged adult, Plot No.15)
Shriram Coop.Housing)
Society, Upanagar,)
Nashik-6)

10. Kundalata Balasaheb)
Wagh, aged adult)
Occ:Household, A-1,)
Thakkar Retreat, Old)
Gangapur Naka, Gangapur)
Road, Nashik-5)

11. Hemalata Ramesh Jadhav)
aged adult,Occ:Household)
169,Bhangar Wadi,Lonawala)
Tal.Maval,District)
Pune 410 401)

12. Shila Madhukar Lohate)
aged adult,Occ:Household)
52, Rane Nagar, Opp.New)
CIDCO, Nashik-9)

13. C.B.Shah, aged adult,)
Occ:Land Developer,)
residing at Ranjeet)
Ravi Apartment, above)
Videocon Plaza, Near)
Canada Corner, Nashik)

14. Rajendra Rasiklal Shah)
aged adult, Occ: land)
developer)

15. Vilas Rasiklal Shah,)
Aged adult, Occ: Land)
Developer, Nos.14 & 15)
residing at Arihant)
Bungalow, behind Karva)
Mangal Karyalaya,)
Sharanpur Road, Nashik)
16. Mahavir Land Developer)
Pvt.Ltd., 4th floor,)
Abhyankar Towers, M.G.)
Road, Nashik.) ..Respondents

Shri M.M.Sathye for petitioner
Shri C.R.Sonawane, A.G.P. for respondent nos. 1, 2 and 3
Smt.Smita Gaidani for respondent nos.4 to 7
Shri N.V.Walawalkar i/b Shri Sujay Gawade for

respondent nos. 8 to 10
Smt.Manjiri Parasnis i/b Shri G.S.Godbole for respondent nos. 11 and 12
Shri R.D.Soni for respondent nos. 13 to 16.

CORAM: S.B.MHASE AND
D.G.KARNIK JJ.
30th January, 2006

ORAL JUDGMENT (Per D.G.Karnik J.)

1. Heard learned counsel appearing for the parties.

2. By this petition, the petitioner takes exception to the order dated 15th July, 1999 passed by the respondent no.2 under sec.34 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short the ULC Act) and the earlier order dated 23rd September, 1998 passed by the respondent no.1.

3. One Smt.Nirmala Digamber Jadhav, mother of the petitioner and respondent nos. 8 to 12, was an owner of the lands bearing survey nos. 18/1, 19 and 24 admeasuring about 63310 sq.meters situated at Nashik, (hereinafter referred to as the said land). She died on 27th October, 1975 leaving behind her 3 sons, 4 daughters and the husband. It appears that there is a dispute between the daughters and sons of Nirmala. Sons claim that by an unregistered deed of release dated 18th

November, 1975, the daughters have released their share in the said land in favour of the brothers. The petitioner, who is one of the daughters, however, disputes this and contends that she has a share in the said land. We are informed that civil suits are pending between brothers and sisters regarding the said land in which legality, validity as well as genuineness of the deed of release has been challenged. Since the release deed is in dispute and subject matter of pending suits we refrain from expressing any opinion as to the genuineness as well as the legality validity and effect of the release deed.

4. The ULC Act came into force on 17th February, 1976. Every person holding land in excess of the ceiling limit prescribed under the ULC Act as on 17th February, 1976 was required to file a return/statement under sec.6 of the ULC Act. As the said land which was owned by Nirmala (who had since died) was far in excess of the ceiling limit, her husband filed a statement/return under sec.6 of the ULC Act. After enquiry an order under sec.8(4) of the ULC Act was passed by the Competent Authority on 31st March, 1986. In the said order the respondent no.1, i.e. the

Competent Authority under the ULC Act, held that on death of Nirmala her property was inherited by her 3 sons, 4 daughters and the husband. He, therefore, held that on death of Nirmala the property was owned by 8 persons and, therefore, the owners were entitled to hold land equivallent to 8 ceiling units. The respondent No.1 accordingly allowed 8 ceiling units and permitted the owners to hold 16,000 sq.meters of land and declared rest of the land to be excess. One of the sons of Nirmala died thereafter leaving behind him respondent nos. 4 to 7 as his heirs. It appears that the respondent nos. 4 to 7 made an application purportingly under sec.34 of ULC Act to the State Government challenging the order dated 31st March, 1986 passed by the respondent no.1 under sec.8(4) of the ULC Act. On that application the matter was taken up in revision by the respondent no.2. On 20th May, 1999 respondent nos. 4 to 7 applied in writing to the respondent no.2 stating that their signatures on the revision application were obtained without disclosing true and correct facts by the respondent nos. 13 to 17 who had entered into an agreement with the sons of Nirmala for development of the said land. They further stated that they never

intended to apply for revision and in any event they were not interested any more in continuing with the revision application. They prayed that their application for revision should be disposed of as not pressed. It is settled principle of law that every applicant has a right to unconditionally withdraw his application at any time unless withdrawal is not permitted by a statute or by judicial precedent. (like a representative suit under Order I Rule 8 of the Code of Civil Procedfure or a PIL where by judicial precedents it is held that withdrawal of a petition filed in the public interest is not permitted without the leave of the Court.) No order of the Court or Tribunal is necessary and the withdrawal is complete as soon as an application for withdrawan is made. (See **Shiv Prasad Vs.Durga Prasad reported in 1975(1) SCC 405.)** In our view, the application for revision purportedly made by the respondent nos. 4 to 7 stood withdrawn on their filing an application for unconditional withdrawal on 20th May, 1999.

5. Despite withdrawal of the revision application by the respondent nos. 4 to 7 it appears that the respondent no.2 purported to

exercise the powers under sec.34 of the ULC Act. It can be assumed that the respondent no.4 purported to exercise the powers of revision suo moto as there was no application pending before him made by any of the parties. The respondent no.2 came to the conclusion that the petitioner and her 3 sisters being daughters of Nirmala had released their share under the unregistered release deed dated 18th November, 1975. He held that the respondent no.1 could not have regarded the petitioner and her 3 sisters to be the co-owners of the said property and the respondent no.1 could not have allotted 4 shares to the petitioner and her 3 sisters and the share should have been granted only to the 3 sons and the husband of Nirmala while computing the permissible holding. He, therefore, came to the conclusion that the order passed by the respondent no.1 under sec.8(4) allowing 8 holdings was erroneous and was required to be set aside. Accordingly lby his order dated 15th July, 1999 the respondent no.2 set aside the order dated 31st March, 1986 passed by the Competent Authority under sec.8(4) of the ULC Act. That order of respondent no.2 dated 15th July, 1999 is impugned in this petition.

6. Learned Counsel for the petitioner raised several challenges to the order dated 15th July, 1999 passed by the respondent no.2. He firstly submitted that the revisional power under sec.34 of the ULC Act can be exercised only within a reasonable period of time though no period of limitation is prescribed under the ULC Act. He invited our attention to a decision of a Division Bench of this Court in **Automotive Research Association of India and another Vs. State of Maharashtra and others reported in 2003(1) Mah.L.J.604** in this regard. He submitted that the revisional powers could not have been exercised after the lapse of 13 years and the impugned order was, therefore, required to be set aside. Secondly, he submitted that respondent no.2 erred in not allotting shares to the petitioner and her 3 sisters who were also the heirs of Nirmala. He submitted that the alleged release deed dated 18th November, 1975 was never executed by the petitioner and it did not bear the signature of the petitioner and any of her 3 sisters. The alleged release deed was a fraudulent document created by the brothers to deprive the petitioner and her sisters of their legitimate share in the said land of their mother. In the alternative, he

submitted that the alleged release deed was required by law to be registered (under sec.17 of the Registration Act) and since it was not so registered it was not admissible in evidence. Respondent No.2, therefore, could not have relied upon the release deed to come to the conclusion that shares were wrongly allotted to the petitioner and her 3 sisters by the respondent no.1 while passing the order under sec.8(4). He, therefore, submitted that even on merits the order dated 15th July, 1999 passed by the respondent no.2 was palpably wrong.

7. We are inclined to agree with the first submission of learned counsel for the petitioner. In view of this we do not think it necessary to go into the second submission especially so as any observation which we may make may affect the rights of the parties in the pending suits relating to the legality and validity of the alleged release deed dated 18th November, 1975.

8. It is true that sections 34 of the ULC Act does not provide for any period of limitation within which the power of revision or suomoto revision can be exercised. It is settled

principle of law that when the power of revision is conferred on the State Government and exercise of such power is likely to adversely affect the civil rights of a citizen, in absence of any period of limitation the power of revision must be exercised within a reasonable period of time. In **State of Gujarat Vs. Patel Raghav Natha and others reported in AIR 1969 S.C.1297,** the Supreme Court was considering the revisional powers of the Commissioner under sec.65 and 211 of the Bombay Land Revenue Code. After noting that the Bombay Land Revenue Code did prescribe a period of limitation within which the revisional powers could be exercised bythe Commissioner, the Supreme Court in para 11 of its judgment observed:

> "The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the

case and the nature of the order which is being revised."

9. While considering the power of suo moto revision under sec.45 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 a learned single Judge of this Court in **Bansilal Ramgopal Bhattad Vs. State of Maharashtra and others reported in 2001(1) Mh.L.J.68l** has held that though no period of limitation was provided for exercise of the revisional power by the Commissioner, the power could not be exercised after long lapse of time. The revisional order which was passed after the expiry of 9 years was struck down. We are in respectful agreement of the views expressed therein.

10. In **Automotive Research Association of India and another Vs. State of Maharashtra reported in 2003(1) Mh.L.J.694**, a Division Bench of this Court while considering the powers of revision of the State Government under sec.34 of the ULC Act held that though no period of limitation has been prescribed within which the revisional power can be exercised, the power would have to be exercised only within a reasonable period of

time. The Court further held that the period of 3 years from the date of order can always be termed as reasonable. We notice that no outer time limit was laid down by this Court for exercise of power of revision under sec.34 of the ULC Act. We also do not propose to lay down any specific time limit within which the power of revision conferred by sec.34 can be exercised. It may depend upon the facts and circumstances of each case. We, however, emphasise that the power of revision conferred by section 39 of ULC Act must be exercised within a reasonable time and the reasonable period would depend upon the facts and circumstances of each case.

11. In the present case, the power of revision has been exercised after 13 years. No explanation whatsoever has been offered for the inordinate delay for exercise of the power after lapse of 13 years. In the circumstances, we are of the view that in the absence of any reasonable explanation for the delay exercise of the power of revision under sec.34 of the ULC Act after lapse of 13 years was not permissible.

12. We have already held that by a written

application dated 20th May, 1999 respondent nos. 4 to 7 had already withdrawn their application for revision and, therefore, revision should have been treated as withdrawn. Assuming, however, that the application by respondent nos. 4 to 7 was to be treated as alive that application itself was made on 28th December, 1997 i.e. after the lapse of more than 11 years of passing of the order under sec.8(4) of the ULC Act. Certainly that was made after the expiry of grossly unreasonable period of time. No explanation whatsoever for the delay was offered even in the said application by respondent nos. 4 to 7. Therefore, even if it is assumed that the order was passed on the application made by respondent nos. 4 to 7, the exercise of power of revision was still undertaken after expiry of grossly unreasonable period of time. The impugned order dated 15th July, 1999, therefore, needs to be set aside and so we quash and set aside the same.

13. For the reasons mentioned above, the petition succeeds. Rule is made absolute in terms of prayer clause (b). Respondents shall pay costs of this petition to the petitioner

which we quantify at Rs.5000/-

14. The file which was kept in the safe custody of this Court vide order dated 25th January, 2006 be returned to the person producing it.

(D.G.KARNIK J.) **(S.B.MHASE J.)**